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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/657,412 | 09/08/2003 | Christopher L. Darling | MS1-1518US | 9946 |
| 22801 7590 06/09/2008 | | | | |
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| EXAMINER | | | | |
| HSU, ALPUS | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 2619 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/657,412

Applicant(s)

DARLING ET AL.

Examiner

Alpus H. Hsu

Art Unit

2619

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 12-14 and 16-75 is/are pending in the application.
- 4a) Of the above claim(s) 21-74 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9 is/are allowed.
- 6) ☒ Claim(s) 9, 12-14, 16-20 and 75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. The applicant is hereby requested to cancel all non-elected claims 21-74 in the next response to expedite the prosecution of the instant application.
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 9, 12-14, 16-20 and 75 are rejected under 35 U.S.C. 102(e) as being anticipated by SO (of record).

Referring to claims 9, 12-14, 16 and 75, SO discloses a system for highly available network load balancing infrastructure, comprising: a plurality of different means (401, 520, 530, 540, 550) for load balancing network traffic; detection means (405) for detecting a failure of one or more of the plurality of different means for load balancing; handling means (405) for handling the failure; and recovery means (405) for recovering from the failure; wherein the plurality of different means for load balancing includes at least one forwarder means (401) for forwarding packets; at least one classifier means (530) that classifies packets and is capable of classifying packets for the forwarding component; at least one request router means (401) that is capable of routing logical requests on request level; at least one session tracker means (520 & 540) that tracks sessions for at least one of the forwarding component and the classifying component; at least one health and load handler means (550) that is capable of handling health and load information, wherein the classifier means (530) and the forwarder means (401) are separate

devices (see col. 9, line 64 to col. 10, line 59, col. 12, line 19 to col. 13, line 6, col. 14, line 41 to col. 15, line 6, col. 15, line 28 to col. 16, line 2, col. 18, line 40 to col. 19, line 7).

Referring to claims 17-20, SO discloses a network load balancing system comprising: a first device (304) that includes forwarding functionality (403); and a second device (410) that includes classifying functionality (530), the classifying functionality performing classifying for the forwarding functionality, wherein once a packet has been classified subsequent packets in that connection are forwarded without further classification (see col. 10, lines 17-43, col. 14, lines 56-63, col. 18, line 40 to col. 19, line 7); wherein hardware of the first device differs from hardware of the second device.

4. Claims 1-8 are allowed.
5. Applicant's arguments regarding claims 9, 12-14, 16-20, filed February 20, 2008, have been fully considered but they are not persuasive.

Regarding claims 9, 12-14, 16-20, after reconsideration, the examiner has maintained the 102(e) rejection of SO of record for the following reasoning:

In SO reference, it does disclose the feature of two separate devices, one for forwarding data packets, and the other for classifying data packets, providing that once a packet has been classified subsequent packets in that connection are forwarded without further classification (see col. 10, lines 17-43, col. 14, lines 56-63, col. 18, line 40 to col. 19, line 7).

Therefore, the rejection of claims 9, 12-14, 16-20 under 35 U.S.C. 102(e) has been sustained, and the newly added claim 75 has also been rejected accordingly.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alpus H. Hsu whose telephone number is (571)272-3146. The examiner can normally be reached on M-F (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on (571)272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AHH

/Alpus H. Hsu/
Primary Examiner, Art Unit 2619